IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6707 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TAHIR DADI

Versus

STATE OF GUJARAT

Appearance:

MR MA KHARADI for Petitioner

MR M/A/BUKHARI, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 19/04/2000

ORAL JUDGEMENT

Rule. Mr. M.A. Bukhari, AGP appears for the respondents and waives service of notice of rule. In the facts and circumstances , the matter is taken up for final hearing today.

This petition is filed against the order passed by the State Government on 3rd August, 1996 at Annexure `C' to the petition .

Shortly stated, the facts are that the petitioner claims to be owner of tempo No. GJ-7-T-6699. It was alleged that on 18th October, 1993, the tempo was plied by one Arifbhai Mohmedbhai Makrani who was driver of the tempo belonging to the petitioner. On a surprise checking being carried out by officers of respondent No.3 Collector, certain essential commodities were found illegally transported in the said tempo in violation of the Gujarat Essential Articles Dealers (Regulations) Order, 1977 (hereinafter referred to as `the Order'). Tempo was, therefore , seized. A show cause notice was issued by respondent No.3 on 3rd December, 1993 to Arifbhai Makrani inter alia alleging that without there being necessary documents and materials, certain essential commodities were transported in the said tempo. He was, therefore, asked to show cause why the tempo should not be confiscated under Section 6A of the Essential Commodities Act, 1955 (hereinafter referred to as `the Act'). Arifbhai was called upon to give his written explanation within seven days and if he wanted to remain present for personal hearing, he was asked to remain present on 22nd December, 1993 in the office of the third respondent.

On 20th January, 1994, the third respondent observed that the allegations levelled against Arifbhai Makrani were proved and that the explanation put forward by him was an afterthought. He,therefore,passed the order imposing fine of Rs. 10,000/- in lieu of confiscation of the tempo observing that essential commodities were carried in contravention of the provisions of law.

Being aggrieved by the order passed by the third respondent, Arifbhai Makrani preferred an appeal before the State Government which was partly allowed . By an order dated 3rd August, 1996, the State Government modified the order passed by the third respondent and it was held that the order passed by the third respondent directing Arifbhai to pay Rs. 10,000/- was liable to be set aside. Instead, the said amount would be recovered from the original owner to whom the tempo belonged.

It appears that in pursuance of the order passed by the State Government, Mamlatdar, Devgadh-Baria issued a notice on 22nd July, 1999 , Annexure `D' to the petition to Arifbhai Makrani asking him to remain personally

present with the original owner of the tempo and to pay up the amount of Rs. 10,000/- so that the amount can be recovered. Said order is challenged in the present petition.

Notice was issued by this Court on December 13, 1999. Today, I have issued rule and heard the parties.

One of the contentions raised by Mr. Kharadi,learned counsel for the petiitoner is that he is the owner of the tempo in question. It was alleged against Arifbhai Makrani that he transported certain essential commodities in contravention of provisions of the Order in the tempo and the tempo was seized. In exercise of powers under Section 6A of the Act, instead of confiscating the tempo, fine of Rs. 10,000/- was imposed and Arifbhai makrani was informed about the same. An appeal filed by Arifbhai Makrani was partly allowed by the State Government and it was held that Arifbhai was not liable to pay the amount of fine but the said amount should be recovered from the owner of the tempo. The contention of the petitioner is that no notice was issued, no explanation was sought and no opportunity of hearing was afforded to the petitioner before passing the order and before directing the petitioner-owner to pay the amount of Rs. 10,000/-.

In this connection it may be necessary to refer to the provisions of Sections 6A and 6B of the Act. Section 6A provides for confiscation of essential commodity. Section 6B enacts that no order confiscating any essential commodity shall be made under Section 6A unless the owner of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance or the person from whom it is seized is given notice, , an opportunity of making a representation and reasonable opportunity of being heard in the matter. The contention of Mr. Kharadi is that it is an undisputed fact that no notice was issued to the petitioner, no opportunity of making a representation in writing was afforded to him and no reasonable opportunity of being heard in the matter was extended to the petitioner who is the owner of the tempo. He, therefore, submitted that the order is violative of principles of natural justice and fair play and hence, the same is liable to be set aside.

Mr. Bukhari, on the other hand, supported the order passed by the State Government. He submitted that provisions of Section 6B are clear. An opportunity contemplated by Section 6B has been afforded to the person from whom tempo was seized and the Section has

been complied with. He, therefore, submitted that the petition deserves to be dismissed.

To consider the contentions of the learned advocate for the petitioner, it is necessary to reproduce sub-section (1) of section 6B which reads as under :

"6-B. (1) No order confiscating any essential commodity shall be made under Section 6A unless the owner of such essential commodity package, covering, receptacle, animal, vehicle , vessel or other conveyance or the person from whom it is seized-

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance.

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter,

(2) x x x x

(3) x x x x

A bare reading of the above provision makes it abundantly clear that no order confiscating the vehicle (tempo in the instant case) could have been made unless conditions specified in sub-section (1) of Section 6A have been complied with. Sub-section (1) enjoins that notice in writing must be issued, an opportunity of making representation should be afforded and hearing must be given either to the owner of the vehicle or to the person from whom such vehicle is seized. It is not even the case of the petitioner who claims to be the owner of the tempo that the tempo was not driven by Arifbhai Mohmedbhai or that he was not given notice and opportunity of hearing. From the record also, it is proved that notice was issued to Arifbhai , opportunity of hearing was given and thereafter order was passed. It,therefore, cannot be said that provisions of

sub-section (1) of Section 6B were not complied with.

In the facts and circumstances of the case and particularly in the light of the fact that when the State has allowed the appeal filed by Arifbhai Makrani in absence of the petitioner , the petitioner could not point out the circumstances, ends of justice would be met if the petition is partly allowed. At the time of hearing of the petition, it was stated by learned advocate for the petitioner that the petitioner is a poor person who maintains his family only on the tempo in question and earns his livelihood. In the peculiar facts of the case, in my opinion, ends of justice would be met if the petition is partly allowed and order passed by the State Government imposing fine of Rs. 10,000/- is reduced and substituted by imposition of fine of Rs. 5,000/- .

For the foregoing reasons, petition is partly allowed . Order of imposition of fine of Rs.10,000/- is reduced to Rs. 5,000/-. Rule is made absolute to the aforesaid extent. No order as to costs.

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parekh